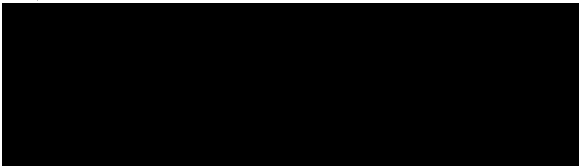


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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: [REDACTED]
WAC 00 268 53322

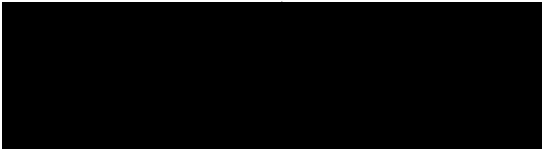
Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

NOV 26 2004

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Sikh temple. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a priest. The director determined that the petitioner had not established: (1) that the beneficiary entered the United States for the sole purpose of working as a priest; (2) that the beneficiary had the requisite two years of continuous work experience as a priest immediately preceding the filing date of the petition; (3) that the beneficiary was a member of the same religious denomination throughout that same two-year period; or (4) the terms of employment and its ability to pay the beneficiary's proffered salary.

On appeal, the petitioner submits copies of previously submitted documents and a brief from counsel.

Section 205 of the Act, 8 U.S.C. § 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Esteime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Esteime*, 19 I&N 450 (BIA 1987)).

By itself, the director's realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.* at 582.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
- (ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue raised in the director's decision concerns the beneficiary's entry into the United States. Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), requires that the alien seeking classification "seeks to enter the United States . . . solely for the purpose of carrying on the vocation of a minister." In this instance, the beneficiary entered the United States as a B-1 business visitor. Thus, the director concluded, the beneficiary did not enter the United States solely for the purpose of working as a minister.

This finding is not defensible. The AAO interprets the language of the statute, when it refers to "entry" into the United States, to refer to the alien's intended *future* entry as an immigrant, either by crossing the border with an immigrant visa, or by adjusting status within the United States. This is consistent with the phrase "seeks to enter," which describes the entry as a future act. While the beneficiary's unlawful entry without inspection, and subsequent lack of valid nonimmigrant status, would raise questions of admissibility at the adjustment stage, under current law these factors do not inherently disqualify the beneficiary for the classification sought. We therefore withdraw this particular finding by the director.

The next issue concerns the beneficiary's past experience. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on August 19, 1999. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a priest throughout the two years immediately prior to that date. The beneficiary entered the United States on May 7, 1999, and therefore spent most of the two-year qualifying period outside the United States.

[REDACTED] a temple in Mehta, India, states that the beneficiary has been a priest of the [REDACTED] religion since April 13, 1982. The letter does not contain any specific details regarding the beneficiary's work during the 1997-1999 qualifying period; there is only the general assertion that the beneficiary "has continued performing the duties of a priest . . . on behalf of this institution at other places."

[REDACTED] secretary of the petitioning temple, states that the beneficiary "has voluntarily provided religious services to our congregation for several months."

On June 15, 2000, the director requested more specific information regarding the beneficiary's activities during the qualifying period. In response, the petitioner submits a new letter from [REDACTED], who states that the beneficiary served [REDACTED] as a priest "from April 13th, 1982 to April 1999," and that [REDACTED] in return, paid him no salary but, instead, "provided [the beneficiary] with room and board and paid for all his expenses." Thakur Singh repeats the assertion that the beneficiary worked "at other places," and contends that "no payroll or employment records are kept."

The director, in the notice of intent to revoke, stated that the petitioner has not submitted contemporaneous documentation to show that the beneficiary was a compensated, full-time employee of the petitioner or any other religious entity during the 1997-1999 qualifying period. In response, counsel asserts that, from May 1999 to August 1999, the beneficiary worked for the petitioning temple, receiving room and board but no salary.

Counsel cites *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982), which indicates that religious work compensated in the form of room and board, in lieu of a regular wage, still amounts to "employment" for immigration purposes. However, this does not necessarily mean that a petitioner can meet its burden of proof simply by asserting, after the fact, that it provided room and board. The original letters submitted with the petition did not indicate that the petitioner had provided room and board in 1999. Rather, [REDACTED] had stated only that the beneficiary "has voluntarily provided religious services to our congregation for several months." The term "voluntarily," in this context, implies uncompensated work. Indeed, even counsel asserts that an alien receiving material support, as in *Matter of Hall*, "is not an unpaid volunteer." The necessary corollary of this statement is that a "volunteer" is someone who does not receive significant material support.

In a new letter [REDACTED], president of the petitioning temple, asserts that the beneficiary "immediately began serving our Sikh Temple as a priest" upon his arrival in the United States, "in exchange for room and board." Even if the petitioner had not previously claimed that the beneficiary worked as a volunteer, and provided compelling evidence to show that the beneficiary worked continuously for the petitioner from May 7 to August 19, 1999, the petitioner must still establish the beneficiary's continuous work overseas from August 1997 to May 1999.

The director revoked the approval of the petition on August 15, 2003, in part because the petitioner had not adequately established the beneficiary's continuous experience during the qualifying period. On appeal, the petitioner submits a new letter discussing the beneficiary's work at the petitioning temple, and a copy of a previously submitted letter from the temple in India where the beneficiary is said to have spent most of the qualifying period. With regard to the beneficiary's work in India, the re-submission of a letter which the director already determined to be deficient does not overcome the grounds for revocation. Despite requests for more specific information, the petitioner has submitted only letters from a single source, attesting that the beneficiary worked at unnamed "other places" at unspecified times, and that records are unavailable.

Given the absence of specific, verifiable information regarding the beneficiary's activities from August 1997 to May 1999, we concur with the director that the petitioner has not adequately established the beneficiary's continuous work as a priest throughout the qualifying period. At the same time, we add that this particular finding is specific to the beneficiary's work during a particular period of time, and therefore the finding is without prejudice to a future petition, filed at such time as the petitioner is able to provide consistent, credible documentation covering the entire two-year period before the filing of that new petition.

The next issue concerns the beneficiary's denominational affiliation. As noted above, 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to show that the beneficiary was a member of the prospective

employer's denomination throughout the two-year qualifying period. 8 C.F.R. § 204.5(m)(2) defines a "religious denomination" as a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, religious congregations, or comparable indicia of a bona fide religious denomination.

Although the record consistently shows that the beneficiary has been a Sikh before, during, and after the qualifying period, the director stated that the petitioner has not shown that the beneficiary was a member of the same denomination throughout the two-year qualifying period. The record, however, does not offer any indication that the Sikh religion is divided into denominations in the same way as some more widespread religions, such as Christianity, are. The record shows no doctrinal differences between the temple in India and the petitioner, such as might be found between, for instance, Sunni and Shi'a Muslims or between Hasidic and Messianic Jews.¹ We withdraw this finding by the director, as we can find no basis for that finding in the record.

The final stated ground for revocation concerns the terms of employment, including remuneration. 8 C.F.R. § 204.5(m)(4) states that the petitioner must show how the alien will be solely carrying on the vocation of a minister (including any terms of payment for services or other remuneration). The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

In a letter submitted with the initial filing, Bachan Singh states that the petitioner "will provide food, lodgings and an additional \$9600 annual salary to" the beneficiary.

The director determined that the petitioner had not adequately documented its ability to pay the beneficiary, and this finding factored into the notice of intent to revoke. The petitioner has since submitted copies of its Form 990 Returns of Organization Exempt from Income Tax for several years. The Form 990 for the year ending July 31, 2000, shows net income in excess of \$130,000, in addition to cash assets that, by themselves, are sufficient to cover the beneficiary's modest salary for well over a year. While the petitioner also has liabilities, such as a mortgage, the petitioner's income exceeds its expenses to a degree sufficient to establish its ability to support the beneficiary. Whatever questions may exist as to how much the petitioner *has paid* to the beneficiary since 1999, those questions are separate from the issue of whether the petitioner is *able* to pay the beneficiary \$9,600 per year.

The director determined that the petitioner has not adequately set forth the terms of the beneficiary's employment, but it is not clear how this is so. The petitioner has listed the beneficiary's duties and explained the terms of compensation (room, board and a small salary). The director has cited no grounds for finding that the stated terms and duties are not credible. We therefore withdraw the director's finding in this regard.

¹ An Internet search using <http://www.google.com> did not identify any denominations within the Sikh faith. Instead, several different sources referred to Sikhism, as a whole, as a "denomination."

While most of the director's findings in this proceeding have not withstood appellate review, we concur with the finding that the petitioner did not adequately establish the beneficiary's experience during the qualifying period. Because this ground is, by itself, sufficient cause for a finding of ineligibility, we affirm the director's decision to revoke the approval of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.